SUPREME COURT OF THE UNITED STATES.

No. ~~125~~. 27.

CHESAPEAKE AND OHIO CANAL COMPANY, PLAINTIFF IN ERROR,

VERSUS

THE UNION BANK OF GEORGETOWN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

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Writ of error.

UNITED STATES OF AMERICA, ss.—*The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting.*

Because in the record and proceedings, as also in the rendition of the judgment on a certain inquisition, which is in the said circuit court, before you, or some of you, which inquisition was had by a certain Chesapeake and Ohio Canal Company on the land of the President and Directors of the Union Bank of Georgetown, a manifest error hath happened to the great damage of the said Chesapeake and Ohio Canal Company, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the

next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may

account marked O, and being the account referred to in the reports of the clerk and assistants as the "exhibits of moneys advanced by D'Arnaud & Co. and Hooglant and Vyfhuis to the Captain," and as amounting to 913 guilders and 19 steivers.

Collector's certificate, W.

Bills of lading of the outward cargo of the Virgin, A, B, C, D, E, F, and agreement as to the amount of freight under them.

Memorandum, S.

Letter of Capt'n Cunyngham to F. C Graf, dated Amsterdam, 3d Nov. 1822.

Letter of F. C. Graf to Capt'n Cunyngham, 14th Sept. 1822.

Depositions under the commission to Holland.

Interlocutory decree.

Report of the clerk and assistants.

Exceptions to the report.

2d interlocutory decree.

Second report.

Trial decree.

This agreement.

CHARLES F. MAYER,
Proctor for Vyfhuis.
GEO. H. STEUART,
For Appellants.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court of the United States, and the same are transmitted accordingly. In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid:

I hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-third day of December, in the year of our Lord one thousand eight hundred and thirty-one.

PHILIP MOORE,
Clerk Circuit Court.

[L. S.]

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UNITED STATES OF AMERICA, ss.—*The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting.*

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next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may

cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued this 24th day of January, 8 .

WM. BRENT, [L. S.]

Clk. of Ct. Ct. of D. C. for Co'ty of Wash'n.

Service of citation acknowledged by F. S. Key, Esquire' att'y for def't in error.

Test: WM. BRENT, *Clk.*

DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the third day of the same month, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States of America the fifty-fourth:

Were present:

The Hon. { WILLIAM CRANCH, Chief Judge. / BUCKNER THRUSTON, & / JAMES S. MORSELL, } Assistant Judges.

TENCH RINGGOLD, Esquire, Marshal.

WILLIAM BRENT, Clerk.

In the record of proceedings of the same court, among others are the following, to wit.

Parties. UNION BANK OF GEORGETOWN—INQUISITION.

Be it remembered, that heretofore, to wit, on the sixteenth day of March, in the year eighteen hundred and thirty, the Chesapeake and Ohio Canal Company, by Clement Cox, Esquire, their attorney, filed in court here the following warrant and inquisition, to wit:

Warrant of inquisition. DISTRICT OF COLUMBIA, *Washington county, to wit.—John Cox, a justice of the peace in and for Washington county aforesaid, to Tench Ringgold, Marshal of the District of Columbia, greeting:*

Whereas it has this day been made to appear to me, that the Chesapeake and Ohio canal is intended to pass through all those parts of the lots of land lying in the county aforesaid, and known and recorded as lots "eight," (8,) "nine," (9,) and "ten," (10,) in square "one," (1,) of the city of Washington, which lie west of the west side of Twenty-eighth (28th) street west, and all those other pieces of land belonging or appertaining to said lots or any of them, and lying due west of the said lots or any of them, and extending thence to and binding with the channel of Rock creek, the property of the President and Di-

rectors of the Union Bank of Georgetown, and that all the said described land is needed, as of an absolute estate in perpetuity, for the making of the said canal and its appurtenant works; and that the owners of the said land disagree with the President and Directors hereinafter named, acting in behalf of the Company hereinafter named, for the purchase of said land: and application has thereupon this same day been made to me, in behalf of the Chesapeake and Ohio Canal Company, by the President and Directors thereof, for a warrant to value the said land for the estate and interest therein aforesaid, and all damages the owner of the said land shall sustain by cutting the said canal through the said land, pursuant to the provisions of the charter of the said company:

You are, therefore, hereby commanded, that, all delays and excuses apart, you do summon a jury of eighteen good and lawful men, inhabitants of the county aforesaid, not related to the parties, nor in any manner interested, to meet on the said land on the fifteenth day of this present month, for the purpose of making the said valuation and assessment of damages. And the inquisition thereupon to be taken, you do sign, and cause to be signed, by some twelve or more of the said jury, and do thereupon return to the clerk of the county aforesaid. Hereof fail not.

Given under my hand, at the county aforesaid, this first day of December, in the year of our Lord one thousand eight hundred and twenty-nine.

JOHN COX.

DISTRICT OF COLUMBIA, *Washington county, to wit.*

Inquisition.

Inquisition indented and taken this fifteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, before me, Tench Ringgold, Marshal of the District of Columbia, by virtue of a warrant for that purpose from John Cox, a justice of the peace in and for Washington county aforesaid, to me directed, and herewith returned, on the land mentioned and described in said warrant, by the oaths of Joel Brown, William Hebb, Frederick W. Huber, Henry Pyfer, Edward Fenwick, Thomas Metcalf, John G. Wilson, Franklin J. Didier, Basil Brawner, Lewis W. Glenn, Philip T. Fenwick, William Coolidge, junior, William H. Campbell, and the affirmation of Robinson Stabler, a Quaker, who holds it unlawful to take an oath on any occasion, being those jurors that appear of eighteen good and lawful men, inhabitants of the county aforesaid, not related to the parties, nor in any manner interested, duly summoned by me pursuant to the mandate of said warrant; every one of which jurors, who have appeared as aforesaid, being by me duly sworn and affirmed according to law, as aforesaid, on the land aforesaid, that he would faithfully, justly, and impartially value the said land, and all damages the owners thereof shall sustain by cutting the Chesapeake and Ohio canal through the said land, according to the best of his

skill and judgment; and that, in such valuation, he will not spare any person for favor or affection, nor any person grieve for malice, hatred, or ill will: they do thereupon, upon their oaths and affirmations, as aforesaid, say that all the said land described in said warrant as of an absolute estate in perpetuity, and all damages that the owners thereof shall sustain by cutting the said canal through the said piece of land, are of the value of one thousand dollars.

In testimony whereof, as well I, the said marshal, as the said jurors, hereunto set our hands and seals, on the day and year first mentioned in this inquisition.

TENCH RINGGOLD, *Marshal.* [seal.]

Joel Brown.	[seal.]	Franklin J. Didier.	[seal.]
Will. Hebb.	[seal.]	Basil Brawner.	[seal.]
F. W. Huber.	[seal.]	Lewis W. Glenn.	[seal.]
Henry Pyfer.	[seal.]	Philip T. Fenwick.	[seal.]
Edward Fenwick.	[seal.]	Wm. Coolidge, jr.	[seal.]
Thomas Metcalfe.	[seal.]	Wm. H. Campbell.	[seal.]
John G. Wilson.	[seal.]	Robinson Stabler.	[seal.]

Motion to affirm inquisition.

And the said Chesapeake and Ohio Canal Company, at the time of filing said warrant and inquisition, by their attorney aforesaid, moved the court for an order to have the same affirmed and recorded, unless good cause be shown to the contrary.

Appearance of Union Bank.

And the said Union Bank of Georgetown, being called, appears in court here, by Francis S. Key, Esquire, their attorney; and the said Union Bank of Georgetown, by their said attorney aforesaid, prays leave of the court here, for time to show cause why said proceedings should not be affirmed; and the first Monday of May next is given them; and the same day is given the Chesapeake and Ohio Canal Company also.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty, come into court here, as well the Chesapeake and Ohio Canal Company, by their attorney aforesaid, as the said Union Bank of Georgetown, by their attorney aforesaid.

And the said Union Bank of Georgetown, by their attorney aforesaid, files in court here the following objections to the affirming of the said inquisition, to wit.

Defendant's objections to affirming inquisition.

1st. That it was made without notice.

2d. That it is made for land not taken for the canal, or any of its works, nor necessary therefor.

3d. That the jury did not describe and ascertain the bounds of the land mentioned in the inquisition.

4th. That the land was not surveyed in the presence of the jury, nor by any authority from them; nor was the beginning, nor any of the other points mentioned in the inquisition, ascertained by the jury to be as described therein.

5th. That the points and lines were shown, and the statement describing them made by the company's own officers, who had previously made the survey, under the orders and directions of the company, and not under oath.

32 c /.

6th. That the stones mentioned in the inquisition as bounding the lands attempted to be condemned, were not set up at the time of the taking the inquisition, and have not even yet been set up.

7th. That the inquisition was directed to be taken by a justice of the peace, and not by the court, there having been a former one quashed.

8th. That the 18 jurors are not named, so as to enable us to see if they were 18 good and lawful men, inhabitants, &c. &c. summoned as required.

9th. Because some of the 18 who had been summoned, were excused.

10th. Because of the gross inadequacy of the damages, the jury having set off against the owner the benefits of the canal.

11th. The quantity of land not designated.

12th. That the description of the land sought to be condemned in the inquisition is insufficient and inaccurate, and does not define the land sought to be condemned.

13th. That the land was not subject to condemnation under the charter.

14th. Because the owner is not named in the inquisition, and the warrant not annexed thereto.

Agreement of counsel.

CHESAPEAKE & OHIO CANAL COMPANY
vs.
JOHN MASON.

SAME
vs.
UNION BANK.

SAME
vs.
HOWES GOLDSBOROUGH.

} All.

In these cases, it is agreed that the plats used by the parties in the circuit court, and all deeds and documents respecting the titles of defendants, or copies of them, shall be used on these appeals without being copied or referred to in the record; also, that all the printed documents, reports, and proceedings of the board and of the company, and the memorials presented to the Congress of the United States, and the Legislatures of Maryland and Virginia, and the documents accompanying them, shall be also used as if contained in the record.

That the causes shall be heard together, and as if cross appeals had been made in each case by the defendants, so as to get a decision on the points decided by the circuit court, both for and against the defendants. A release executed by the company in favor of John Mason is also to be used, as if in the record: also, a deed from Tawny to Mason and Stoddard.

The objection of want of notice in the case against John Mason is also to be considered by the Supreme Court. And deposition may be taken on one day's notice before a justice of the peace, to support the objections which are to be considered